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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY RENTERIA,

Defendant and Appellant.

B217872

(Los Angeles County
Super. Ct. No. BA347052)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Norman J. Shapiro, Judge. Affirmed.

Christine C. Shaver, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M.
Roadarmel, Jr., and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff
and Respondent.

A jury convicted defendant Larry Renteria of five counts of attempted murder (Pen. Code, §§ 664/187, subd. (a)),¹ and in each count found that the crime was willful, deliberate, and premeditated (§ 664, subd. (f)), that defendant used a handgun within the meaning of various provisions (§ 12022.53, subds. (b), (c), and (d)), and that the crime was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)). The trial court sentenced him to an aggregate prison term of 200 years to life. He appeals from the judgment of conviction, contending: (1) that the trial court erred in denying his motion to bifurcate the gang allegation, or (2) if we determine that the motion was not sufficiently presented, that his trial counsel was ineffective for not creating a sufficient record. We find no error and affirm.

BACKGROUND

The trial testimony was extensive. However, because the contentions on appeal relate to the gang allegation alone, we present only a brief summary of the evidence supporting the convictions, in accord with the proper standard on appeal. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

Prosecution

The victims of the attempted murders were Joe Aguila, Roberto Fuentes, Ruben Munoz, Michael Sanchez, and Juan Vasquez. Around 4:30 or 5:00 a.m. on September 28, 2008, they were gathered on Mott Street, a short distance from the apartment building where Joe lived at 2555 Cincinnati Street in Los Angeles. Earlier, at the building next door, 2551 Cincinnati, a party had been held (which

¹ All undesignated section references are to the Penal Code.

the victims did not attend). Defendant had attended, and lingered outside for a while, appearing to eye the group.

By 5:00 a.m. the party goers had dispersed. The victims stood around, drinking beer. Suddenly, defendant appeared running toward the group, pointing a revolver. He said, “East L.A.”² Roberto said, “I don’t bang” or “we don’t bang” and “no, no, no.” Defendant began firing as the victims fled. Joe, Michael, and Ruben ran down Mott Street toward Folsom. They heard multiple gunshots. Ruben was struck in the arm, Michael in the base of the neck. Both of them collapsed.

Juan and Roberto ran toward the rear of the building where Joe lived, pursued by defendant. As Juan ran up the stairs toward Joe’s apartment, he was shot twice in the head. Roberto continued running, and saw defendant jump a fence and flee toward the building next door, 2551 Cincinnati.

Later that morning, Los Angeles Police Officers, including a SWAT team, surrounded 2551 Cincinnati and, using bullhorns, ordered the occupants to exit the building. Ultimately all residents complied. Eight men, including defendant, emerged from the building and were taken to the police command post at a nearby Jack-In-The-Box restaurant. There, at a field show up involving all eight, Joe and Roberto identified defendant as the shooter. Later, shown a photographic six-pack at the hospital, Michael selected defendant’s photograph and said orally, and in a statement written by the attending detective and initialed by Michael, that the person in the photograph “looks a lot like the shooter.”

² When interviewed by Los Angeles Police Officer Vincent Correa at the hospital about two hours after the shooting, Michael Sanchez said that the shooter had displayed a handgun and said “East L.A.” just before firing. At trial, he testified that he did not hear the shooter say anything, and denied telling the police that he heard the shooter say “East L.A.”

According to Joe, about two months before the shooting, East L.A. Trece gang members had begun frequenting the lower right unit of 2551 Cincinnati, and East L.A. Trece gang graffiti appeared on an exterior wall of the building. After the field showup in which defendant was identified, police searched the lower right unit of 2551 Cincinnati. Beneath the subfloor under the stove, they discovered a bag that contained three revolvers and two notebooks. The notebooks contained gang-related writings, including “East L.A.” and individual gang monikers. On one wall of the unit was written, “East L.A. 13” (referring to the East L.A. Trece gang) and “Dukes” (referring to “Tiny Duke,” the mascot of the University of North Carolina which East L.A. Trece adopted as its own).

The wounded victims – Ruben, Michael, and Juan – survived. The bullet in Ruben’s left arm struck his medial nerve. It took several months for him to get his use and feeling back and he still had pain and numbness in his fingers. Michael had surgery to treat the bullet wound to his neck. Juan had surgery to treat the two bullet wounds to his head. Only one bullet could be removed; the other remains.

At trial, Roberto and Joe identified defendant as the shooter. Michael testified that he did not see the shooter’s face and that when he selected defendant’s photograph while in the hospital, he did so because he was pressured to identify someone and circled defendant’s photograph simply to please the detective. Michael had identified defendant as the shooter at the preliminary hearing. Just after he made the identification, defendant said, “Quit looking at me. It wasn’t me.” Michael was frightened by the statement. At trial, he remained concerned for his safety. He testified that he made the identification at the preliminary hearing because defendant looked like the person in the photograph he had selected. Ruben and Juan did not make an identification because they did not get a good look at the shooter.

Los Angeles Police Officer Alexander Alvarez testified as a gang expert. He was familiar with the East L.A. Trece gang, whose primary activities include murder, vandalism, assault, and possession of weapons. He identified two other cases in which East L.A. Trece members were convicted of crimes, one involving murder and the other involving vandalism.

According to Officer Alvarez, the East L.A. Trece gang, which numbers around 130 to 150 members, originated in the 1970's in the Pico Aliso Village Housing Project at First and Mission. When the project was demolished in the late 1990's or early 2000's, the gang was forced to move to a new area within the borders of First Street, Soto, Mott, and Cesar Chavez. Parts of the area are claimed by other gangs, and the entire area is surrounded by still more gangs, including the Krazy Ass Mexican (KAM) gang to the north. East L.A. Trece has been forced into a very compressed area in which the gang is fighting for its existence.

Officer Alvarez was not personally acquainted with defendant, but opined that defendant is a member of East L.A. Trece. He based his opinion on defendant's tattoos, including "East L.A. XIII" in five inch letters on defendant's chest and "East L.A. 13" on his back. Such tattoos demonstrated dedication to the gang. Also, a field identification card stated that defendant's gang moniker was "Gumby."

Asked a hypothetical question on facts similar to the present case, Officer Alvarez opined that the hypothetical shootings were committed to enhance the reputation of the East L.A. Trece gang. The area of the shootings was within the territory of the rival KAM gang. The presence of East L.A. Trece graffiti on the building at 2551 Cincinnati, from which the shooter came and to which he fled, announced that the gang was asserting its presence despite being in rival territory. By saying "East L.A." before the shooting at the victims, the shooter was

identifying his gang allegiance. Such crimes intimidate the community, potentially intimidate rival gangs, and elevate the shooter's gang among rival gangs by showing the willingness to commit violent crimes. According to Officer Alvarez, "It shows . . . that you may run us out of here from time to time, we may be surrounded by enemies, but we are still going to try to overcome; we're still here."

Defense

The sole defense witness was Erasmo Flores, who attended the party at 2551 Cincinnati. Defendant also attended the party, and went to sleep in the back room. Flores watched television in the living room of the apartment from 10:00 p.m. until around 4:00 a.m., when he saw defendant lying on the bed. Flores slept on a sofa near the door, and did not hear anyone enter or leave the apartment.

DISCUSSION

Defendant contends that the trial court erred in denying his motion to bifurcate the gang enhancement, or, if we determine that the motion was not sufficiently presented, that his trial counsel was ineffective for not creating a sufficient record. We find no error and no ineffective assistance of counsel.

People v. Hernandez (2004) 33 Cal.4th 1040 (*Hernandez*) sets forth the standards to be used when the trial court is asked to bifurcate trial of a gang enhancement. The trial court has the discretion to grant such a request, but because "the criminal street gang enhancement is attached to the charged offense and is, by definition, inextricably intertwined with that offense[,] . . . less need for bifurcation generally exists with the gang enhancement than with a prior conviction allegation." (*Id.* at p. 1048.) *Hernandez* explained that "evidence of gang membership is often relevant to, and admissible regarding, the charged

offense. Evidence of the defendant’s gang affiliation—including evidence of the gang’s territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime. [Citations.] To the extent the evidence supporting the gang enhancement would be admissible at a trial of guilt, any inference of prejudice would be dispelled, and bifurcation would not be necessary. [Citation.]” (*Id.* at pp. 1049-1050.) But “[e]ven if some of the evidence offered to prove the gang enhancement would be inadmissible at a trial of the substantive crime itself—for example, if some of it might be excluded under Evidence Code section 352 as unduly prejudicial when no gang enhancement is charged—a court may still deny bifurcation. . . . [¶] . . . *[T]he trial court’s discretion to deny bifurcation of a charged gang enhancement is . . . broader than its discretion to admit gang evidence when the gang enhancement is not charged.* [Citation.]” (*Id.* at p. 1050, italics added.) In moving for bifurcation, the defense must “‘clearly establish that there is a substantial danger of prejudice requiring that the charges be separately tried.’ [Citation.]” (*Id.* at p. 1051.)

In the instant case, defense counsel made a brief, pre-trial motion to bifurcate the gang allegation, and submitted without further argument. The trial court denied the motion: “[F]rom what I know about the case, what little I know about the case, this case [has] nothing but gang overtone to it, and the request to bifurcate that allegation would deprive the jury . . . of knowing the full breadth of this case. It’s quite relevant . . . and, therefore I’m going to have to deny your request to bifurcate the gang allegation.”

The trial court’s ruling was correct. Defense counsel made no showing that there was a “substantial danger of prejudice” from trying the gang enhancement at

the same time as the attempted murder charges. (*Id.* at p. 1051.) Therefore, the trial court properly denied the motion.

The reason defense counsel made no such showing is clear from the evidence introduced at trial: no such showing could have been made. The evidence of defendant's gang affiliation and the gang-related motive for the crime was inextricably linked to the otherwise inexplicable five attempted murders. In substance, the prosecution evidence showed that the East L.A. Trece gang, which was fighting for its very existence, had a visible outpost in KAM territory at 2551 Cincinnati. The shooter, who declared "East L.A." immediately before firing, emerged from the area of that outpost and afterwards fled to the same area. The shooter's crimes benefitted the East L.A. Trece gang because they constituted, in essence, a defense of the outpost and a signal of defiance of the gang that controlled the area, KAM. As Officer Alvarez testified, the crimes were a declaration to KAM that "you may run us out of here from time to time, we may be surrounded by enemies, but we are still going to try to overcome; we're still here."

Defendant was a member of East L.A. Trece, he was apprehended at 2551 Cincinnati the morning after the shooting, and he was identified as the shooter by three of the victims (though one, Michael Sanchez, later recanted his prior identifications in the photo six pack and at the preliminary hearing). Thus, much of the gang evidence was crucial to the issues of motive, identity, intent, premeditation and deliberation. In light of this strong probative value, and in light of the aggravated nature of the charged attempted murders themselves, the fact that some of evidence used to prove the gang allegation (e.g., the proof of qualifying crimes committed by other gang members) would not have been admissible absent the gang allegation, would not have justified bifurcation. Thus, although defense counsel submitted on the bifurcation motion without argument, his performance

did not constitute ineffective assistance of counsel. It cannot be said either that he failed to perform in a manner to be expected of reasonably competent attorneys, or that the result of the proceeding would have been different in the absence of his purported failing. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.